EXHIBIT 17

CONFIDENTIAL
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)
	)
SECURITIES INVESTOR	)
PROTECTION CORPORATION,	)
	)
Plaintiff-Applicant,	)
	)
vs.	) 08-01789 (SMB)
	)
BERNARD L. MADOFF	)
INVESTMENT SECURITIES, LLC,	)
	)
Defendant.	)
	)
	)
In re:	)
	)
BERNARD L. MADOFF,	)
	)
Debtor.	)
	)

Videotaped Deposition of BERNARD L. MADOFF, VOLUME I, taken on behalf of the Customers, before K. Denise Neal, Registered Professional Reporter and Notary Public, at the Federal Correctional Institution, 3000 Old Highway 75, Butner, North Carolina, on the 26th day of April, 2017, commencing at 9:07 a.m.

* * * * *

CONFIDENTIAL

Page 106

other words, you couldn't as a customer, our firm policy was to not handle a typical retail order for a client. We either -- you either had to be a broker-dealer or a bank to be a client of Madoff or if you were a customer, you had to have -- when you opened an account, you had to have a minimum of 500,000, which is at the very earliest $500,000 in the account. Typically it was then 2 million. That was if you were an individual client.

So but if you called us up and you said you want to buy 20 shares of IBM or you want to buy a thousand shares of IBM, we would not do that order. If it wasn't -- the only customer business that we did was where we managed the entire account and we made the decisions.

Q. Okay. Now, if you'd look on page 23 at the bottom of the page, the question was how many accounts under consideration for avoidance action were established with Madoff prior to the inception of the Ponzi scheme?

In making the net investment method determination net equity from these accounts, has the Trustee used any of the pre-Ponzi disbursements? If so, provide details, et cetera. And the response says based on the Trustee's investigation and upon

Page 107

review of the earliest records available to him, the Trustee has found no evidence indicating that the BLMIS investment advisory business has been operated as anything but a Ponzi scheme.

A. Right.

Q. Now, did anyone on behalf of the Trustee ever talk to you about the trades that you did in the 1980s?

A. No.

Q. Did the Trustee ever disclose to you that he, in fact, had some trading records from the 1980s?

A. No.

Q. Now, when SIPC is using here the phrase Ponzi scheme, if you accept for a moment that a Ponzi scheme is a nonexistent business in which people invest where the sole source of paying returns on their investments is investments from new investors --

A. Uh-huh.

Q. -- on that definition was the split strike ever a Ponzi scheme? In other words, did you ever need new cash from new customers in order to redeem other customers?

A. No.

Page 108

Q. Did you ever need new cash from new customers to pay the earnings that were reported on the statements?

A. No. Let me make a statement that I have never to my recollection ever had a conversation with a Trustee, ever. The Trustee never met with me, never spoke to me, never asked me anything from the date of my arrest until currently. I've had meetings with the attorneys when the attorneys came down here after, you know, I don't know whether that was 2010 or some year in that, but there was nothing; but the Trustee, the only time I ever saw the Trustee was at my proffer meeting with the SEC.

Q. In December 2008?

A. December of 2008. And as far as I recall, he never asked me anything and I never said anything to him.

Q. Okay. But did anyone from the Trustee's law firm --

A. No. The law firm, yes. They came down at one period of time. David Sheehan could -- was present.

Q. Okay. But did they ever ask you whether you actually executed the trades that were done in the convertible arbitrage strategy?

Page 109

A. I don't think they ever asked me that. The only conversation I had with them about trade at all was the David Kugel scrap of paper that I mentioned before.

Q. Okay, okay. Did they ever ask you exactly when the -- when you stopped buying the securities for the split strike?

A. No.

Q. Did they ever ask you whether you needed the money from new investors in order to pay old investors?

A. No.

(Customers Exhibit Number 31 was marked for identification.)

MS. CHAITMAN: I'm up to Exhibit 31, and this is the expert report of Bill Feingold. That's okay.

MR. GOLDMAN: I'll take it easy.

Q. (By Ms. Chaitman) Okay. Have you seen this document before?

A. Yes.

Q. Okay. Do you know Bill Feingold?

A. No.

Q. Did you ever hear about him?

A. No.

Q. I'd like to go through the substantive portion of this report and I'd like you to give me your insights on it; okay?
A. Uh-huh.
Q. So if you'd be good enough to turn to page two?
A. Uh-huh.
Q. And if you could just read paragraph 12 and then if you have any comments on that, I'd like you to tell me what they are.
A. Yes.
Q. Okay. Can you tell me what they are?
A. What? What did you ask me?
Q. Did you have any comments on this? Do you -- do you --
A. Yeah. I think, you know, he pointed out, you know, the fallacy of what Dubinsky used, made statements about volume and so on. He's criticizing -- I think there were 41 points that he made that Dubinsky was incorrect in his analysis, which was basically very similar to all my comments when I analyzed the Dubinsky report.
Q. Okay. In paragraph 13 he says that most trading and bonds, unlike stocks, takes place in the over-the-counter market and that's something you had

testified to; right?
A. Right.
Q. And then he quotes the SIFMA website for the statement, quote, the OTC market is much larger than the exchange markets and the vast majority of bond transactions, even those involving exchange listed issues, take place in this market?
A. Correct. I think this is -- he's reflecting very similar to the last time we had a deposition and I produced a very large book that was written. I gave -- you took as evidence --
Q. Yes.
A. -- that stated all of this.
Q. Right.
A. That was in complete contrast to Dubinsky's report.
Q. Right. And if Dubinsky had spoken to anyone who did trading and convertible bonds in the 1980s, would they have found this information out?
A. Yes.
Q. In paragraph 14 Feingold says in an OTC market investors do not trade directly with each other but with many individual dealers who continuously make markets, paren, buy and sell. As such, OTC markets are much less centralized and data

are less readily available. Is that accurate?
A. That's correct.
Q. If you'd just take a look at paragraph 15 and if you'd just take a moment to read that and then I'd like your comments on it.
A. Right. He's basically saying that, you know, that -- that convertible bonds and bonds in general do not trade for the most part on the floor of an exchange. They trade over the counter between dealers. Madoff is one of the largest convertible bond dealers in the country. We made more markets in convertible bonds than any other firm. He doesn't state that, but that was common knowledge.
And he's saying that you couldn't get accurate information, you know, until 2002 because that was when TRACE came in. And even when TRACE came in, there was question as to whether or not the correct volume was reported even then. Bond dealers in general do not like to report their transactions or their volume because they consider it proprietary information.
The SEC would like -- look, the SEC would like everything to be transparent. That's been a -- in the 50 years I've been in this industry, that has been a debate that went on and still has not been

resolved. And to a certain extent, you know, they blame me for a lot of -- a lot of this because of the fact that we were the ones that pioneered the form of electronic trading.
Right now all of these problems that you have with this what they call that book that came out, Flash Boys, all the trading is done in dark pools and not -- when I came into this industry, 98 percent of the business in securities was traded on the floor of an exchange and listed securities.
The SEC was unhappy with that and I was given the responsibility for developing a more competitive marketplace. And that's how we started this electronic trading and that's how I developed NASDAQ originally. The volume on the -- on New York Stock Exchange's list of securities today is only about 30 percent on the floor of the exchange and 70 percent if it is done over the counter.
So and that's a constant problem. The whole marketplace has changed and will probably never go back to the way it was. And nobody wants to -- the goal of the industry is to have less transparency because people always -- always want to trade against somebody else. They're all competing with each other.

CONFIDENTIAL

Page 114

So the idea is to conceal what you're doing, what you're buying, what you're selling. And because of what the SEC would like to do, they'll never change that. Business is done more in Europe now than ever before and it's -- that's where the industry is.

Q. In paragraph 19 Mr. Feingold says, thus, when Mr. Dubinsky cites data from the New York Stock Exchange to support his arguments about bond volume, he is treating approximately one percent of the activity as indicative of the entire market.

A. Really?

Q. Is that --

A. Yes.

Q. In fact, I think that the book that you brought to the last deposition --

A. Right, right.

Q. -- said that one percent of the convertible bond trading was done on the New York Stock Exchange?

A. Right.

Q. And if Mr. Dubinsky or someone working for him had spoken to anyone who did convertible bond trading in the 1980s, would they have learned that?

A. Look, without trying to be cruel, the

Page 115

Dubinsky report is an embarrassment. I mean, I just -- that's the only way to describe it. Quite frankly, I don't understand it because if you look at his background, you know, as an accountant and his so-called fraud order, I don't understand how -- to me it's a mystery and would be for anybody a mystery that would read that report would be stunned, you know, at his -- at the report.

I don't understand it. I mean, Feingold's background is certainly equal, if not better, than Dubinsky's and it's certainly more current. So but, quite frankly, you could find anybody that was familiar with the marketplaces that would be able to write the same kind of report that Feingold wrote that was critical of Dubinsky's report.

He does state in the report if you read through the Dubinsky report, he does make comments that he doesn't have -- he doesn't have access to certain information. He can't find it, but that didn't prevent him from still coming -- drawing conclusions.

So if you're going to -- if you're going to say, well, I only looked at the New York Stock Exchange volume, you know, and, therefore, I'm determined that Madoff could not have bought

Page 116

securities because he -- you know, it didn't match the volume of the New York Stock Exchange when everybody knows that you don't -- you can't just look at the New York Stock Exchange volume.

I mean, how could you write a report that said that? What he should have said is I do not have access to the information to make a determination of whether these transactions took place or not. That's what -- that's what -- you know, that's what I would have done or anybody would have done.

Q. In paragraph 27 Mr. Feingold writes in paragraph 99 Mr. Dubinsky inaccurately describes the process by which convertible securities become common shares. He writes that, quote, many convertible securities have the option for the company to call the security at a predetermined date or at the company's discretion, that is, the company has the right to convert the convertible securities into common shares.

In instances where the bond or preferred equity is called, the shares are converted on the record date at a determined amount, end quote. In fact, except for a specific subcategory known as quote, mandatory, end quote, convertible securities,

Page 117

the securities are convertible at the investor's discretion, not the issuing company's. When a company calls a security, the investor is then given a period typically between 20 and 120 days in which to decide whether to convert the security into common shares or to accept the cash call price stipulated in the company's call notice. Do you agree with Mr. Feingold on that?

A. Yes.

Q. Now, in paragraph 30 Mr. Feingold writes footnote one of two of Mr. Dubinsky's report contends that a significant percentage of the short positions reported by Madoff customers exceed the amount of short interest in those stocks as reported at month end by the stock exchange. I found this very dubious.

Going through the list I noticed that Pfizer, one of the world's largest drug companies, had short interests according to Mr. Dubinsky's table of 826,162 shares at the end of March 1992. Pfizer's closing price that month was $69.50 per share according to Yahoo Finance.

Average daily trading volume in Pfizer was 10.74 million shares. If Mr. Dubinsky's data are correct, the short interest in Pfizer then

constituted less than eight percent of an average day's volume.

A. I don't know what you -- I don't know what you're asking me. I mean, as I say, I'm at a loss to explain this whole Dubinsky report. I know, it's -- if it wasn't such a -- if his accusations weren't so serious, it would almost be comical.

Q. Well, is it difficult to find out what the average daily volume in Pfizer was?

A. Yes, I mean, because volumes were reported. The over the -- he's looking at volume that was reported on the exchange when over-the-counter dealers don't report the volume. I mean, you know, so you can't -- it's like adding apples and oranges. You can't -- you can't -- you can't find the information.

Again, as I said before, the business of an exchange is to try and let people know exactly what has happened. That's what they advertise. You know, an exchange wants to make everything public because in theory, you know, the SEC would love, you know, the public to understand everything that goes on, how many shares trade, where they trade, at what price they trade. Institutions who do the majority of the business want to do just the opposite.

They do not want to let, you know, everybody know what they're doing because it's no different than like insider trading. You know, the idea is you're in an industry where everybody is competing against each other, including -- including the public customers. You have to understand that the person who buys stock thinks he knows something that the person who's selling it doesn't understand.

It's not a zero sum gain. Someone is going to be a winner, someone is going to be a loser. And it's the same. So information is the key. People are trying to get less information out as possible, you know, but that's the way the industry is done now. The markets are not -- they're much less transparent today than they were 20 years ago, you know.

So you can't -- it's not an accident that people can't -- that Dubinsky can't find this information that he's trying to do because it's not available. I mean, quite frankly, I think that what happened was in fairness -- fairness to me, not the Trustee -- the Trustee drew conclusions from day one of what he thought he wanted to -- he wanted the outcome to be. He wanted the outcome to be that I was a fraud from the very beginning, that I never

did any transactions. He made statements like because he couldn't find confirmations, therefore, from other broker-dealers. Therefore, the transaction never took place.

All right. Him not understanding that the industry stopped producing confirmations to noncustomers. So when I bought stock from -- you know, in the open market from Merrill Lynch, we didn't send confirmations to each other. The industry discontinued that.

Picard drew a conclusion because he couldn't produce a confirmation. Therefore, the trade never took place. He totally ignored the fact that, number one, confirmations weren't even generated any longer, which is something that is very obvious to anybody in the industry. Also, he totally eliminated the fact that nobody keeps records past six years any longer.

They're destroyed, you know. So he -- you know, but he had a conclusion that he drew from day one very similar to what the U.S. Attorney did when he asked me do I ever short stocks and I said yes, of course, I short stocks. You know, he said did you ever sell to a customer that didn't know? Of course, I did.

You know, and I had to explain to the U.S. Attorney that that's what the business of market makers are doing, you know; but so he wanted to determine, well, since I always shorted stock back in 1962, that I might have never bought stock. I mean, you know, I don't -- I think that what happened was Dubinsky was -- you know, the Trustee must have told Dubinsky this is what my conclusion was. This is what my theory is.

And Dubinsky, whether he did it in a devious way or not, I don't think so. I just think that he just did the best he could. He wanted to get information, so he took whatever information was available. The fact that the information didn't exist didn't mean that, you know -- that, you know, the conclusion they drew, it didn't make any sense. I don't know what else to say.

Q. Okay. Now, Mr. Dubinsky opined that you were insolvent as far back as 1983.

A. I saw that.

Q. Do you agree with him?

A. No. I can tell you he stated how he came to that conclusion, you know. He just took whatever the -- you know, whatever -- he made the conclusion that I never did any transactions in '83. So,

therefore, he said since the customer showed that, you know, balances in the account from transactions, he figured, okay, that was a liability that Madoff had. He totally eliminated the fact that I was doing business, you know, back in 1983 and so on. So, therefore, I had the assets to cover that.

So he said, well, he knew what the liabilities were because it was a customer statement. He had no way of knowing what the assets that I had were because he didn't have any records going back then. I mean, who would possibly make a statement like that? I mean, the biggest mistake I made was not going to trial.

Had I gone to trial rather than just saying okay, I'm going to eliminate the government spending millions of dollars and years in a trial with me, I'm just going to admit that I was guilty because I was from 1992 on, which was bad enough. You know, they for some reason, the Trustee wanted to determine that I was guilty from 1963.

All right. Had I gone to trial, I would have called in any number of expert witnesses like this Feingold or anything else and the judge would have totally laughed the Trustee out of court. Why he even bothered writing -- 90 percent of his report

deals with after 1992. I already admitted that I didn't do the transactions after '92. So why spend all that time on that, you know? What he did prior to that made absolutely no sense anyhow.

Q. Now, did Dubinsky acknowledge that you held securities at Lehman, Bear Stearns, Morgan Stanley --

A. No.

Q. -- Fidelity and JPMC?

A. No, no. That's not true. He did state that I had an account at Morgan Stanley, yeah. He stated that. He didn't give any details on it but, I mean, it was he had a copy of the Morgan Stanley report in his information here. So, therefore, he had to know that I had securities over there. He did state that I had securities at those -- at other firms, yeah. He did state that.

Q. But did he acknowledge that you had purchased those securities --

A. No.

Q. -- with 703 account money?

A. No.

Q. Now, Mr. Dubinsky also opined that your firm was insolvent from 2002 on. Do you agree that you were insolvent as of 2002?

A. In 2002 I did not have -- if he's -- I would say yes, I was insolvent because I did not have enough assets to cover the liabilities that I had with the customers in 2002.

Q. If you had -- if everyone had demanded payment at one time?

A. Yes. You have to assume that if I show the customers had a liability on that, whether they asked me for it or not, I was insolvent. You have to make the assumption that if you owe the money out, whether you have the ability -- if you don't have the ability to pay if called, you're insolvent.

Q. Okay. Now, as of 2002 if the four families had paid you the money they owed you, would you still have been insolvent?

A. In 2002? Yes, because the fund business was -- I wouldn't have been able to cover all my direct accounts, you know, other than the funds because the customers only had a liability of $5 billion whereas the funds had $14 billion.

So, you know, I wouldn't have enough money to cover, you know, $19 billion; but I certainly wouldn't have had enough money to cover all my individual clients but, quite frankly, it doesn't make a difference. They're both the same.

Q. Looking at paragraph 39 of Mr. Feingold's report, he says an active trader would likely have held many convertible arbitrage positions for substantially less than the period until the next, paren, usually, end paren, semi-annual coupon was paid. Most likely, bonds were either converted or sold into the open market.

Again, an investor who sells a corporate bond receives accrued interest from the buyer instead of collecting on the coupon date from the issuer and the interest is built into the total cash inflow.

A. Right.

Q. Do you agree with that?

A. Yes.

Q. Is that the -- is that the strategy that you used?

A. Yeah. It's what anybody would use at TRACE. It's not unique to Madoff. It's, you know -- it's, you know, standard operating procedure.

MS. CHAITMAN: Okay. All right. We have to take a break because they have to change the disc.

THE VIDEOGRAPHER: Going off the record.